Appeal Brief
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Dated: January 21, 2009
Electronic Signature: /Michael B. Stewart/ (Michael B. Stewart)

Docket No.: 00-VE22.03D CON1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Patrick E. White et al.

Application No.: 10/807,215 Confirmation No.: 3300

Filed: March 22, 2004 Art Unit: 2616

For: TELEPHONE SERVICE VIA INTERNET PROTOCOL NETWORKING Examiner: A. A. Riyami

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is filed pursuant to 37 C.F.R. §41.37 in furtherance of the Notice of Appeal filed in the above-identified application on September 19, 2008, and appeals the decision of the Examiner in the Office Action dated March 19, 2008 ("Final Office Action") and the Advisory Actions dated June 5, 2008, and October 7, 2008. This application was filed March 22, 2004.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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I. REAL PARTY IN INTEREST

The real party in interest of the present application, solely for purposes of identifying and avoiding potential conflicts of interest by board members due to working in matters in which the member has a financial interest, is Verizon Communications Inc. and its subsidiary companies, which currently include Verizon Business Global, LLC (formerly MCI, LLC) and Cellco Partnership (doing business as Verizon Wireless, and which includes as a minority partner affiliates of Vodafone Group Plc). Verizon Communications Inc. or one of its subsidiary companies is an assignee of record of the present application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 33-54 are pending, and are the subject of this appeal. Claims 1-32 were canceled. The claims that are being appealed are reproduced in a Claims Appendix to this Appeal Brief.

IV. STATUS OF AMENDMENTS

There are no outstanding after-final amendments to the claims. All claim amendments have been entered including Appellants' amendment to correct a typographical error in claim 33, which was filed in response to the Advisory Action dated June 5, 2008, and filed concurrently with the Notice of Appeal dated September 19, 2008. The Examiner entered the amendment in the Advisory Action dated October 7, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following is a concise explanation of the subject matter defined in at least each of the independent claims involved in the appeal, as required by 37 C.F.R. § 41.37(c)(1)(v). The following explanation is not intended to be used to construe the claims, which are believed to speak for themselves, nor do Appellants intend the following explanation to modify or add any claim elements, or to constitute a disclaimer of any equivalents to which the claims would otherwise be entitled, nor is any reference to certain preferred embodiments herein intended to disclaim other possible embodiments.

The following summary indicates certain portions of the specification (including the drawings) that provide examples of embodiments of elements of the claimed subject matter. It is to be understood that other portions of the specification not cited herein may also provide examples of embodiments of elements of the claimed subject matter. It is also to be understood that the indicated examples are merely examples, and the scope of the claimed subject matter includes alternative embodiments and equivalents thereof. References herein to the specification are thus intended to be exemplary and not limiting.

A. Claim 33

Independent claim 33 recites a method that includes detecting an off-hook condition of a calling station, and subsequent to detecting the off-hook condition, receiving dialed digits from the calling station, the dialed digits indicating a call request and a telephone number of a called party. (e.g., specification, page 20, lines 10-22; page 22, lines 13-16).

The method also includes providing a request to a routing database, the request including at least a portion of the telephone number of the called party (e.g., specification, page 20, line 22- page

21, line 5; page 22, lines 22-24) and receiving in response to the request an identity of a gateway to the called party (e.g., specification, page 21, lines 22-26; page 25, lines 7-9).

The method further includes sending a first signaling message over a packet-switched data network to the gateway using the identity of the gateway, the first signaling message including the telephone number of the called party and a telephone number of the calling station and receiving the first signaling message at the gateway (e.g., specification, page 21, lines 21-26; page 22, lines 1-2; page 23, lines 15- 26).

The method further includes formulating an SS7 signaling message in response to the first signaling message, the SS7 signaling message including the telephone number of the calling station and the telephone number of the called party, sending the SS7 signaling message from the gateway over a connection to a public switched telephone network (PSTN) system and receiving at the gateway over the connection to the PSTN system an indication that the called party is at least one of busy or available (e.g., specification, page 23, line 24- page 24, line 2).

The method further includes when the called party is indicated busy, sending a second signaling message from the gateway over the packet-switched data network indicating the called party is busy, and when the called party is indicated available, sending a third signaling message from the gateway over the packet-switched data network indicating that the called party is available (e.g., specification, page 24, lines 2-15).

And finally, the method includes recording billing information associated with the call request (e.g., specification, page 25, lines 5-14).

B. Claim 42

Claim 42 depends from claim 33 and further recites receiving the request at an IP address database, translating the at least a portion of the telephone number of the called party into an IP address of the gateway and providing the IP address of the gateway to the called party as the identity of the gateway (e.g., specification, page 19, lines 10-21; page 22, line 22- page 23, line 19).

C. Claim 43

Independent claim 43 recites a method that includes detecting an off-hook condition of a calling station, and subsequent to detecting the off-hook condition, providing dial tone to the calling station, and further, receiving dialed digits from the calling station, the dialed digits indicating a call request and a telephone number of a called party (e.g., specification, page 20, lines 10-22; page 22, lines 13-16).

The method further includes providing a request to a routing database, the request including the telephone number of the called party (e.g., specification, page 20, line 22- page 21, line 5; page 22, lines 22-24) and receiving in response to the request an address of a called party computing device associated with the telephone number of the called party (e.g., specification, page 21, line 22-26; page 25, lines 7-9).

The method further includes sending a first signaling message over a packet-switched data network to the called party using the address of the called party computing device, the first signaling message including the telephone number of the called party and a telephone number of the calling station (e.g., specification, page 21, lines 21-26; page 23, lines 15- 23).

And finally, the method includes establishing a voice communication between the calling station and the called party via the packet-switched data network (e.g., specification, page 24, lines 11-15).

D. Claim 52

Claim 52 depends from claim 43 and further recites receiving an indication that the called party is at least one of busy or available (e.g., specification, page 23, line 24- page 24, line 2).

The method further includes when the calling party is indicated busy, sending a second signaling message over the packet-switched data network indicating the called party is busy; and when the called party is indicated available, sending a third signaling message over the packet-switched network indicating the called party is available (e.g., specification, page 24, lines 2-15).

E. Claim 53

Claim 53 depends from claim 43 and further recites receiving the request at the routing database, translating the at least a portion of the telephone number of the called party into an IP address of the called party computing device and providing the IP address of the called party computing device as the address of the called party computing device (e.g., specification, page 19, lines 10-21; page 22, line 22- page 23, line 19).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 33-54 are pending and all stand rejected. Claims 33-54 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,285,745 to Bartholomew ("Bartholomew"). Appellants appeal from the rejection of these claims, which are presented in the Claims Appendix.

VII. ARGUMENT

Independent Claim 33

Independent claim 33 is directed to a method that includes providing a request to a routing database and receiving in response to the request, an identity of a gateway to the called party. In addition, over the connection to the PSTN system, an indication that the called party is at least one of busy or available is received at the gateway. The method further includes:

> when the called party is indicated busy, sending a second signaling message from the gateway over the packet-switched data network indicating the called party is busy;
>
> when the called party is indicated available, sending a third signaling message from the gateway over the packet-switched data network indicating that the called party is available. *Emphasis Added.*

Appellants respectfully submit that the Bartholomew reference does not teach or suggest at least the above-recited features of independent claim 33.

Rather, Bartholomew discloses a system and method for providing communication between voice mailboxes in a multiple mailbox system using connectionless packet delivery through established networking arrangements. (Bartholomew, col. 1, lines 19-22). The system includes a public switched network in communication with an SS7 network to control the signaling for the switched network. The switched telephone network consists of a series of central offices that are referred to as signaling points (e.g., SPs or SSPs) in reference to the SS7 network. (Bartholomew, col. 10, lines 5-13; Figure 1). The SS7 network includes a series of signal transfer points (STPs) that are connected to the SPs in the network. (Bartholomew, col. 10, lines 41-44; Figure 1).

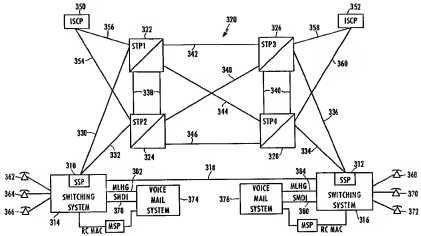

FIG. 4

A simplified diagram of such a system is shown above in Figure 4 of Bartholomew, wherein the network further includes a voicemail system associated with each switching network. Specifically, Figure 4 illustrates two SSPs 310 and 312, which include end office switching systems 314 and 316. The end office 314 represents an end office of one operating company, while end office 316 represents an end office of a different operating company. Each switching system is provided with a centralized message service or voice mail system (374 and 376). (Bartholomew, col. 22, lines 16-25; lines 50-52; Figure 4). In operation, a caller at station 362 connected to central office 314 makes a call to a remote called party at a station 370 at a central office 316. In this case, the common channel signaling system 320 (i.e., the SS7 network) determines that the call cannot be completed because of a busy or no answer situation. At this point, the attempt to establish a voice connection between the two stations through the SS7 network is terminated and the caller is directed to the voice mail system 374 associated with the originating central office 314. (Bartholomew, col.

24, lines 55-67; Figure 4). *Emphasis Added*. Thus, when a call attempt in Bartholomew is unable to connect, the call through the SS7 network is terminated and the caller is directed to the voicemail system associated with the originating central office. Indeed, there is no further communication over the network.

Referring to Figure 4 of Bartholomew, Appellants note that the call originates at central office switching system 314. When the determination is made that the call cannot be completed, due to the called line being busy or having no answer, the caller is directed from central office switching system 314 to voice mail system 374. As clearly shown in Figure 4, voice mail system 374 is directly connected to central office switching system 314 through either simplified message desk interface (SMDI) data lines 378, which generally carry RS-232 signals, or by multi-line hunt groups (MLHGs) 382, which are generally T1 type trunk circuits that carry voice channels in a digital time division multiplexed format. (Bartholomew, col. 15, lines 30-48; col. 22, lines 50-67; Figure 4). In either configuration, there simply is no path from the central office switching system 314 to voice mail system 374 that is through a packet-switched data network. Therefore, Bartholomew cannot possibly teach or suggest a method wherein "when the called party is indicated busy, sending a second signaling message from the gateway over the packet-switched data network indicating the called party is busy," as recited in claim 33.

In the Advisory Action, the Examiner points to column 20, lines 1-9 of Bartholomew for teaching "indicating that the called party is busy and sending a signaling message from the gateway." (Advisory Action, continuation sheet, typographical errors omitted). However, the referenced portion of Bartholomew merely describes a known call processing method wherein the call is serially connected before the status (e.g., busy or available) of the called party is known.

Indeed, Bartholomew recognizes that by establishing a connection between the caller and the called party prior to knowing the status of the called line, already limited trunk capacity is unnecessarily consumed. Specifically, the above-cited portion of Bartholomew states,

> If at this point the call were connected serially through the trunks and appropriate central offices between the caller and the called party using in channel signaling, the trunks would be engaged before a determination is made that the called line is available or busy. Particularly if the called line is busy, this would unnecessarily tie up limited trunk capacity. The CCIS system through the STP's originally was developed to alleviate this problem.

Therefore, at most, the above-recited portion of Bartholomew identifies a potential short-fall associated with call processing systems that connect a caller to a called party prior to knowing the status of the called party. It does not, however, teach or suggest "sending a second signaling message from the gateway over the packet-switched data network indicating the called party is busy," as recited in claim 33.

Moreover, because Bartholomew is directed to a system for providing communication between voice mail systems, the condition on which a called party is available is not even contemplated. Therefore, Bartholomew cannot possibly teach or suggest a method that includes "sending a third signaling message from the gateway over the packet-switched data network indicating that the called party is available," are further recited in claim 33.

For at least any of the reasons set forth above, independent claim 33 is patentable over Bartholomew and in condition for allowance. The Board is respectfully requested to reverse this rejection.

Dependent Claims 42 and 53

Claim 42 depends from claim 33 and further recites,

> receiving the request at an IP address database;
>
> translating the at least a portion of the telephone number of the called party into an IP address of the gateway;
>
> providing the IP address of the gateway to the called party as the identity of the gateway.

Similarly, claim 53 depends from claim 43 and further recites,

> receiving the request at the routing database,
>
> translating the at least a portion of the telephone number of the called party into an IP address of the called party computing device and
>
> providing the IP address of the called party computing device as the address of the called party computing device.

In the Final Office Action, the Examiner broadly refers to columns 27 and 28 of Bartholomew for teaching the above-recited features of claim 42 and Figure 8 and columns 27-29 of Bartholomew for teaching the above-recited features of claim 53. However, the only portion of columns 27 and 28 that Appellants can identify as applicable, discloses an Internet address being forwarded to an interface where the interface acts like a router to encapsulate message and address information in a TCP/IP format that's dispatched to a destination Internet address with an appropriate routing label and handling instructions. The handling instructions direct the addressee telephone network to retrieve from an appropriate database the identity of the addresses and to verify its subscription to a mailbox. (Bartholomew, col. 28, lines 45-54). However, at most, Bartholomew discloses a method for routing and attaching a message in a TCP/IP format that is subsequently dispatched to a destination address.

Bartholomew does not appear to teach or suggest receiving a request at an IP address database and translating at least a portion of the telephone number of the called party into an IP address of the gateway, as recited in claim 42, or receiving the request at the routing database and translating the at least a portion of the telephone number of the called party into an IP address of the called party computing device, as recited in claim 53. For at least the foregoing reasons, claims 42 and 53 are separately patentable over Bartholomew.

Independent Claims 43

Independent claim 43 is directed to a method that includes providing a request to a routing database. The method further includes:

> receiving in response to the request an address of a called party computing device associated with the telephone number of the called party; and
>
> establishing a voice communication between the calling station and the called party via the packet-switched data network. *Emphasis Added.*

Contrary to the Examiner's assertion (Final Office Action, page 5), Bartholomew does not teach or suggest at least the above-recited features of claim 43.

Columns 27 and 28 of Bartholomew (which were cited by the Examiner for allegedly teaching the above-recited features), set forth details associated with a connectionless packet delivery service in connection with two public switched telephone networks (PSTNs) employing voice mail systems as shown in Figure 8. Additionally, the operation of a service in which a voice mail subscriber in one network desires to send a voice message to a subscriber in another network is described. This service includes dialing a directory number associated with the calling party's voice mail network. In response to dialing the directory number, the calling party's voice mail network

prompts the caller to enter a voice message. Upon completing and accepting the entered voice message, a processing unit within the calling party's voice mail network instructs the caller regarding the procedure for keying in the directory number of the destination and to depress a specific key to send the message. The message, containing the directory numbers for both the intended recipient and the sending party along with routing and handling instructions, is sent to an internet interface. The internet interface acts in a router fashion in accordance with the handling instructions, which direct the addressee telephone network to retrieve from its appropriate database the identity of the addressee and to verify its subscription to a mailbox. The message is then stored in the designated addressee mailbox. In other words, the voice message containing all relevant data is transferred from one voicemail system to another through the internet and respective internet interfaces. However, none of this information is sent in response to a request. Therefore, Bartholomew cannot possibly teach or suggest "receiving in response to the request an address of a called party computing device associated with the telephone number of the called party," as recited in claim 43.

Moreover, as described above with respect to claim 33, Bartholomew is directed to a system for providing communication between voice mail systems. Therefore, the condition on which communication is established between parties is not contemplated. Accordingly, Bartholomew cannot possibly teach or suggest "establishing a voice communication between the calling station and the called party via the packet-switched data network," as further recited in claim 43. For at least these reasons, independent claim 43 (and dependent claims 44-53, which depend therefrom) is patentable over Bartholomew and in condition for allowance.

Dependent Claim 52

Claim 52 depends from claim 43 and further recites,

> receiving an indication that the called party is at least one of busy or available;
>
> when the calling party is indicated busy, sending a second signaling message over the packet-switched data network indicating the called party is busy;
>
> when the called party is indicated available, sending a third signaling message over the packet-switched network indicating the called party is available.

The arguments set forth above with respect to independent claim 33 are equally applicable here with respect to claim 52. When a call attempt is made in Bartholomew, but is unable to connect, the call through the SS7 network is terminated and the caller is directed to the voicemail system associated with the originating central office. Referring to Figure 4 of Bartholomew above, there is simply no further communication over the network and no path from the central office switching system 314 to voice mail system 374 that is through a packet-switched data network. Therefore, Bartholomew cannot possibly teach or suggest a method wherein "when the called party is indicated busy, sending a second signaling message over the packet-switched data network indicating the called party is busy," as recited in claim 52.

In addition, because Bartholomew is directed to a system for providing communication between voice mail systems, the condition on which a called party is available is not even contemplated. Therefore, Bartholomew cannot possibly teach or suggest a method that includes "sending a third signaling message over the packet-switched data network indicating that the called party is available," as further recited in claim 52. For at least the foregoing reasons, claim 52 is separately patentable over Bartholomew.

CONCLUSION

In view of the above analysis, a reversal of the rejections of record is respectfully requested of this Honorable Board. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 65632-0187, from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: January 21, 2009

Respectfully submitted,

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Correspondence Customer Number: 25537
Attorneys for Applicant

APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/807,215

1-32. (Cancelled)

33. (Previously Presented) A method comprising:

detecting an off-hook condition of a calling station;

subsequent to detecting the off-hook condition, receiving dialed digits from the calling station, the dialed digits indicating a call request and a telephone number of a called party;

providing a request to a routing database, the request including at least a portion of the telephone number of the called party;

receiving in response to the request an identity of a gateway to the called party;

sending a first signaling message over a packet-switched data network to the gateway using the identity of the gateway, the first signaling message including the telephone number of the called party and a telephone number of the calling station;

receiving the first signaling message at the gateway;

formulating an SS7 signaling message in response to the first signaling message, the SS7 signaling message including the telephone number of the calling station and the telephone number of the called party;

sending the SS7 signaling message from the gateway over a connection to a public switched telephone network (PSTN) system;

receiving at the gateway over the connection to the PSTN system an indication that the called party is at least one of busy or available;

when the called party is indicated busy, sending a second signaling message from the gateway over the packet-switched data network indicating the called party is busy;

when the called party is indicated available, sending a third signaling message from the gateway over the packet-switched data network indicating that the called party is available;

recording billing information associated with the call request.

34. (Previously Presented) The method of claim 33, wherein the dialed digits include a unique identifier indicating that the call request be routed over the packet-switched data network.

35. (Previously Presented) The method of claim 33, wherein the unique identifier is one of a prefix code, an off-hook condition or a PIN number.

36. (Previously Presented) The method of claim 33, wherein the billing information is associated with the calling station.

37. (Previously Presented) The method of claim 33, wherein the billing information includes billing on at least one of a flat rate basis or a timed basis.

38. (Previously Presented) The method of claim 33, wherein the packet-switched network includes the Internet.

39. (Previously Presented) The method of claim 33, wherein the PSTN is part of a Local exchange Carrier network.

40. (Previously Presented) The method of claim 33, wherein the identity of the gateway includes an IP address of the gateway.

41. (Previously Presented) The method of claim 33, further comprising:
subsequent to detecting the off-hook condition and prior to receiving dialed digits from the calling station, providing dial tone to the calling station.

42. (Previously Presented) The method of claim 33, further comprising:
receiving the request at an IP address database;
translating the at least a portion of the telephone number of the called party into an IP address of the gateway;

providing the IP address of the gateway to the called party as the identity of the gateway.

43. (Previously Presented) A method comprising:

detecting an off-hook condition of a calling station;

subsequent to detecting the off-hook condition, providing dial tone to the calling station;

receiving dialed digits from the calling station, the dialed digits indicating a call request and a telephone number of a called party;

providing a request to a routing database, the request including the telephone number of the called party;

receiving in response to the request an address of a called party computing device associated with the telephone number of the called party;

sending a first signaling message over a packet-switched data network to the called party using the address of the called party computing device, the first signaling message including the telephone number of the called party and a telephone number of the calling station;

establishing a voice communication between the calling station and the called party via the packet-switched data network.

44. (Previously Presented) The method of claim 43, further comprising:

recording billing information associated with the call request.

45. (Previously Presented) The method of claim 44, wherein the billing information is associated with the calling station.

46. (Previously Presented) The method of claim 44, wherein the billing information includes billing on at least one of a flat rate basis or a timed basis.

47. (Previously Presented) The method of claim 43, wherein the dialed digits include a unique identifier indicating that the call request be routed over the packet-switched data network.

48. (Previously Presented) The method of claim 47, wherein the unique identifier is one of a prefix code, an off-hook condition or a PIN number.

49. (Previously Presented) The method of claim 43, wherein the packet-switched network includes the Internet.

50. (Previously Presented) The method of claim 43, wherein the address of the called party computing device includes an IP address.

51. (Previously Presented) The method of claim 43, wherein the routing database includes a Domain Name System (DNS) service.

52. (Previously Presented) The method of claim 43, further comprising:

receiving an indication that the called party is at least one of busy or available;

when the calling party is indicated busy, sending a second signaling message over the packet-switched data network indicating the called party is busy;

when the called party is indicated available, sending a third signaling message over the packet-switched network indicating the called party is available.

53. (Previously Presented) The method of claim 43, further comprising:

receiving the request at the routing database;

translating the at least a portion of the telephone number of the called party into an IP address of the called party computing device;

providing the IP address of the called party computing device as the address of the called party computing device.

54. (Previously Presented) The method of claim 33, further comprising:

establishing a voice communication between the calling station and the called party via the packet-switched data network.

APPENDIX B

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

APPENDIX C

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.